

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In Re:)	
)	Case No. 08-61570
)	
Yellowstone Mountain Club, LLC,)	
)	
Debtor.)	

THE HON. RALPH B. KIRSCHER, presiding

TRANSCRIPT OF PROCEEDINGS

February 20, 2009

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1 YELLOWSTONE MOUNTAIN CLUB BANKRUPTCY

2 - - -

3 BE IT REMEMBERED THAT this matter came on for hearing
4 on February 20, 2009, in the United States Bankruptcy
5 Court, District of Montana, The Hon. Ralph B. Kirscher,
6 presiding:

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8 The following proceedings were had:

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10 THE COURT: (Audio begins at this point) -- state your
11 purpose for the motion. It looked like it had been scaled
12 down in time. And I guess before going forward, I'm
13 assuming this hasn't been resolved. Correct?

14 MR. SAUNDERS: That's correct, Your Honor. This
15 is Rob Saunders from Skadden-Arps. I don't think either
16 motion has been resolved.

17 THE COURT: Okay.

18 MR. DESCHENES: Your Honor, this is Gary
19 Deschenes. I'm new to this. I represent Edra Blixseth.

20 I got a call this morning regarding this.
21 Mr. Joe Eisenberg is apparently in court and wasn't able to
22 get out to attend this. And he, I understand, is the one
23 that represents the one that this motion is against. And
24 he has asked to pass on to of the Court please delay this
25 hearing until probably Monday so that he can attend and

1 voice his concerns regarding it. But that's why he's not
2 involved in this.

3 MR. SAUNDERS: Your Honor, this is Rob Saunders.
4 May I speak to that?

5 THE COURT: Just a moment, just a moment.

6 Mr. Deschenes, you are appearing on her behalf?

7 MR. DESCHENES: Yes.

8 THE COURT: Okay. Mr. Saunders, do you wish to
9 go forward with the motions?

10 MR. SAUNDERS: Yes, Your Honor.

11 THE COURT: Okay. Let me make it clear to
12 everybody before Mr. Saunders goes forward: I'm going to
13 rule on this, and I'm going to rule on it here in very
14 short order, just so you all know where I'm at on this. I
15 take a very dim view of these types of things. I expect,
16 especially with the number of competent counsel in this,
17 that these matters get resolved short of this, but when
18 they can't be, I will deal with it. But today, I'm going
19 to -- I'm not going to spend a lot of time on it, and I'm
20 going to rule. So make your remarks brief.

21 MR. SAUNDERS: Your Honor, this is Rob Saunders
22 from Skadden-Arps for Credit Suisse. I hear that, and we
23 will be brief, Your Honor.

24 The first motion is directed to BGI, which is the
25 entity that owns the debtors and that Ms. Blixseth owns

1 herself. You know, the issue here is that we haven't had
2 any response from anybody on behalf of BGI, any attorney.
3 The Court entered an order on January 9th that authorized
4 us to undertake a Rule 2004 examination of, of BGI, BLX
5 Group, Inc. And under that order, we issued a subpoena,
6 and the documents were supposed to have been produced on
7 February 9th. Nothing was produced to us and no one
8 responded.

9 Your Honor may recall that when we were in court
10 on February 10th in Butte, we raised this issue, including
11 the fact that nobody appeared who was representing BGI. As
12 I recall from that hearing, Ms. Blixseth's testimony was
13 that she was hopeful that Mr. Eisenberg would be
14 representing BGI in this discovery. So as soon as we got
15 back, we contacted Mr. Eisenberg and asked him if he was
16 representing or if his firm was representing BGI and to try
17 to figure out when we could get and how we could get the
18 documents. And he told us that his firm was not
19 representing BGI, that he only represented Ms. Blixseth
20 personally. We asked him if he could point us in the
21 direction of somebody who did represent BGI, and he did not
22 respond.

23 So BGI has never objected to the Rule 2004
24 examination or the subpoena, and they've simply failed to
25 produce any documents. So we'd ask for the Court to enter

1 the order that we've asked for in the motion compelling BGI
2 to produce the documents that are identified in the Rule
3 2004 examination order immediately.

4 THE COURT: Okay. As it's related to BGI, it's
5 granted. The next motion.

6 MR. SAUNDERS: Thank you, Your Honor. The other
7 motion is directed to CrossHarbor.

8 Your Honor, we understand from the response that
9 CrossHarbor filed late last night that they've now
10 withdrawn the various objections that they had previously
11 been asserting to the scope of our Rule 2004 discovery
12 requests so that the only issue left is whether there
13 should be a deadline for their production and, if so, what
14 it is.

15 To me, Your Honor, that's a strange issue because
16 I don't think I've ever had a situation where a party was
17 arguing that there should not be any deadline at all for
18 its document production. And, particularly, in light of
19 Your Honor's comments, I wish we didn't have to be taking
20 up Your Honor's time today, but I hope that Your Honor can
21 understand why CrossHarbor's refusal to commit to a
22 deadline for production is unacceptable to Credit Suisse in
23 this circumstance.

24 We've been at this effort to get discovery from
25 CrossHarbor for several months now. Your Honor entered an

1 order on December 10th, more than two months ago, that
2 granted our motion for expedited discovery of CrossHarbor,
3 and in response to that, we got two documents.

4 CrossHarbor made an oral motion to the Court on
5 December 17th to have Your Honor withdraw that discovery,
6 and Your Honor overruled that objection and denied that
7 motion.

8 We were unsuccessful thereafter in getting
9 documents from CrossHarbor under that discovery order, so
10 we ultimately pursued a rule 2004 examination. Your Honor
11 entered that order on January 20th, more than, again, a
12 month ago. And, Your Honor in court on February 10th
13 denied CrossHarbor's objection and their motion for
14 reconsideration of that 2004 order.

15 So CrossHarbor, Your Honor, has given us every
16 reason to believe that they'll drag this discovery out as
17 long as possible if there's not a firm deadline in place.
18 As of my conversation with Mr. Moore this past Wednesday
19 morning, the 18th, CrossHarbor had still not started the
20 process of gathering documents other than a small stack of
21 documents that they've produced to us last night and this
22 morning. And that's very troubling to us, and that's why
23 we want a deadline.

24 Now, with respect to what that deadline needs to
25 be, it really has to be the deadline that we proposed,

1 February 27th. That is not a -- you know - (inaudible,
2 audio cuts out) - date with room to move.

3 The debtors have scheduled an extremely important
4 motion for approval of their plan of reorganization and
5 disclosure statement to be heard on March 4th. The
6 interrelationships and the agreements and the
7 communications between CrossHarbor and Discovery Land and
8 Ms. Blixseth have always been important to us, and they're
9 now critically important, given that those parties are
10 proposing a plan of reorganization that they've negotiating
11 together. But we need to be able to have to discovery in
12 order to be able to present evidence at the March 4th
13 hearing. So if we don't get these documents --

14 THE COURT: Mr. Saunders, I appreciate your
15 argument.

16 And Mr. Moore or Mr. Hursh, do you have a
17 response?

18 MR. HURSH: Yes, Judge, this is Mr. Hursh. I
19 would like to respond.

20 My understanding when I spoke to Mr. Moore
21 earlier in the week - and I don't want to put words in his
22 mouth - was that, in fact, the significant discovery issues
23 had been resolved save for a date at which production would
24 be completed. As a result, I was surprised yesterday when
25 the motion to compel came across the wire.

1 I understand Your Honor has not been -- or had
2 access to the docket this morning. I did file a short
3 response last evening with the hope that you would have an
4 opportunity to see it wherein attached as Exhibit 1 was an
5 immediate response by Mr. Moore to Mr. Saunders saying:
6 You know, I think there's some confusion. We're producing
7 documents. Consistent with that, last evening, a FedEx was
8 sent out with, I believe, a significant number of documents
9 that complied with their request.

10 I mean we are a little, I guess, confused. Now,
11 whether it was miscommunication, or what, I don't know. I
12 don't want to lay blame because we're all here, obviously,
13 taking our time to sort it out.

14 With regards to a production date, Your Honor, we
15 have agreed to produce a significant volume of documents as
16 they've requested. And with regard to doing so, we ask
17 that they be -- that they recognize that it takes time to
18 do that. Once the client gets them to us, they have to be
19 reviewed, privilege logs produced, Bates-stamped, and then
20 get them out the door to Mr. Chehi, Mr. Levy, and
21 Mr. Saunders.

22 Now, having said that, we think it is unrealistic
23 that we'll be able to do that consistent with the
24 obligations to review, Bates-stamp, and create privilege
25 logs by the date they've requested. We are not, as

1 Mr. Saunders maybe suggested, trying to drag our feet here.
2 I think the exhibits to our response show that CrossHarbor
3 is cooperating. I mean there was conversations even
4 yesterday after the motion was filed between Mr. Saunders
5 and my colleagues at Duane Morris regarding the terms of a
6 consensual protective order.

7 THE COURT: Mr. Hursh, thank you.

8 Lynn, what day of the week is the 27th?

9 THE CLERK: The 27th is next Friday, a week from
10 today.

11 THE COURT: Well, gentlemen, in considering the
12 motion, I was going to order that all documents be produced
13 by next Tuesday. But given the fact that Credit Suisse has
14 talked about the 27th, I will concede that date, given
15 their request of that date, that all documents be produced
16 together with any log, if necessary, for privileged
17 documents.

18 We're going to trial on the 4th, which would be,
19 what, Wednesday?

20 UNIDENTIFIED SPEAKER: That's right, Your Honor.

21 THE COURT: So at this point, the order is going
22 to be issued, granting. And the time for both BGI and
23 CrossHarbor to produce is February 27th.

24 And if there's problems with that, I'll entertain
25 motions for sanctions or a protective order, and that will

1 be taken up promptly. And I may do that even before the
2 hearings on the 4th.

3 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

4 THE COURT: We'll issue an order to that
5 effect -- or orders to that effect.

6 I appreciate you all the being available. As you
7 are aware, I am out of Montana. And so with that, these
8 matters can be resolved; and if not, we'll take them up the
9 first part of next week on any other motions -- not next
10 week; the week after. I'm sorry. So we'll see if
11 everything was produced by -- (inaudible, audio cuts out.)

12 With that, gentlemen, that will conclude the
13 hearing. Have a good day.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic recording of the proceedings in the above-entitled matter, all done to the best of my skill and ability.

Jonny B. Nordhagen